

**LEWIS
AND
ROCA**
—LLP—
LAWYERS

40 North Central Avenue
19th Floor
Phoenix, Arizona 85004-4429
Telephone: (602) 262-5311
Michael J. McCue, Nevada Bar No. 6055 (Pro Hac Vice Motion Pending)
Direct Dial: (702) 949-8224
Direct Fax: (702) 949-8363
Email: MMcCue@LRLaw.com
Jennifer A. Van Kirk (State Bar No. 019618)
Direct Dial: (602) 262-0203
Direct Fax: (602) 734-3885
Email: JVanKirk@LRLaw.com
Sean D. Garrison (State Bar No. 014436)
Direct Dial: (602) 223-7434
Direct Fax: (602) 734-3939
Email: SGarrison@LRLaw.com
Anne Aikman-Scalese (State Bar No. 023066)
Direct Dial: (520) 629-4428
Direct Fax: (520) 879-4725
Email: AAikman@LRLaw.com

Attorneys for Plaintiff Raytheon Company

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Raytheon Company,
a Delaware corporation,

Plaintiff,

vs.

Lockheed Martin Corporation,
a Maryland corporation,

Defendant.

COMPLAINT

- (1) Declaratory Judgment under 28 U.S.C. § 2201 *et seq.*
- (2) Unfair Competition and False Designation of Origin, 15 U.S.C. § 1125(a)(1)
- (3) Trademark Infringement under A.R.S. §§ 44-1441 *et seq.*
- (4) Common Law Trademark Infringement and Unfair Competition
- (5) Unjust Enrichment

(Jury Trial Demanded)

Plaintiff Raytheon Company ("Raytheon") by and for its Complaint against Defendant Lockheed Martin Corporation ("Lockheed") alleges as follows:

INTRODUCTION

This action is between two direct competitors in the Laser Guided Bomb ("LGB") market: Raytheon and Lockheed. When introduced forty (40) years ago by Raytheon's predecessor-in-interest, Texas Instruments, PAVEWAY™ LGBs revolutionized tactical air-to-ground warfare. Since that time, Raytheon has sold billions of dollars worth of its



1 PAVEWAY™ LGBs, which have been used in every major U.S. military operation since
2 the 1970s, and has developed strong trademark rights and substantial goodwill in the
3 PAVEWAY™ mark. The generic name for these goods is GBU-10, GBU-12, and GBU-
4 16 LGB kits.

5 Defendant Lockheed entered the Laser-Guided Training Round or LGTR market
6 in the early 1990s and sold its LGTRs for over ten (10) years under the product's true
7 generic name -- "Laser Guided Training Rounds." When Lockheed started
8 manufacturing GBU-10 and GBU-12 kits for LGBs (as opposed to training rounds) in
9 2002, it continued to use the generic name "laser guided bomb" or the abbreviation
10 "LGB." During the period from 2002 to 2005, it also referred to its kits as LMLGB for
11 Lockheed Martin Laser Guided Bomb, DMGB for Dual Mode Guided Bomb, and
12 DMLGB for Dual Mode Laser-Guided Bomb.

13 Then in approximately 2005 -- three years after entering the LGB kit market and
14 *decades after the PAVEWAY™ mark was first used by Raytheon's predecessor in*
15 *interest* -- Lockheed decided to start calling its own LGB kits "PAVEWAY," so as to
16 capitalize on the substantial goodwill Raytheon had already established in the
17 PAVEWAY™ mark. Lockheed then set in motion a deliberate strategy to simultaneously
18 misappropriate and destroy Raytheon's rights in the term PAVEWAY™.

19 Lockheed's continued and progressive encroachment on Raytheon's rights in its
20 PAVEWAY™ mark has caused actual confusion in the market and substantial and
21 irreparable injury to Raytheon. Moreover, Lockheed's LGB products have experienced
22 poor quality issues, causing post-sale confusion and direct harm to Raytheon's reputation
23 and goodwill, as well as millions of dollars in lost sales.

24 From 2005 through 2011, Raytheon and Lockheed engaged in a six-year battle
25 over the registrability of the PAVEWAY™ mark in the Trademark Trial and Appeal
26 Board of the United States Patent and Trademark Office ("TTAB") and are engaged in
27 similar proceedings in foreign jurisdictions. Based in part on Lockheed's own efforts to
28



1 use the mark in a generic fashion and to influence the perceptions in the market,
2 Lockheed was able to convince the TTAB that PAVEWAY™ is a generic term primarily
3 based on evidence dating from 2005, three years *after* Lockheed entered the market.
4 However, as discussed below, in this Court and in the Ninth Circuit, the distinctiveness of
5 the PAVEWAY™ mark must be determined at the time that Lockheed entered the market
6 in 2002. At that time and continuing to the present, the PAVEWAY™ mark was and
7 continues to be a distinctive mark identifying Raytheon as the source of LGBs.

8 Raytheon asserts claims for declaratory judgment, unfair competition, false
9 designation of origin, trademark infringement, and unjust enrichment arising out of
10 Lockheed's infringement and attempts to destroy the distinctiveness of the PAVEWAY™
11 mark. Raytheon seeks injunctive relief, damages, attorneys' fees and costs.

12 THE PARTIES

13 1. Plaintiff Raytheon is a Delaware corporation with a principal place of
14 business at 870 Winter Street, Waltham, Massachusetts 02451. Raytheon Missile
15 Systems is the largest division of Raytheon Company. It is located in Tucson and
16 employs about 12,000 people. The LGBs in question are designed, marketed and
17 manufactured by the Air Warfare Systems product line in Tucson, Arizona.

18 2. Upon information and belief, Defendant Lockheed is a Maryland
19 corporation with a principal place of business at 6801 Rockledge Drive, Bethesda,
20 Maryland 20817.

21 NATURE OF THE CASE

22 3. This is an action for declaratory judgment under 28 U.S.C. §§ 2201, unfair
23 competition and false designation of origin in violation of Section 43(a) of the Lanham
24 Act, 15 U.S.C. § 1125(a), Arizona state trademark infringement in violation of A.R.S.
25 §§ 44-1441 *et seq.*, common law trademark infringement and unfair competition, and
26 unjust enrichment in violation of Arizona law.

27

28



JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and pursuant to 15 U.S.C. § 1121(a), because Raytheon's unfair competition and false design claim arises under the federal trademark laws, 15 U.S.C. § 1051, *et seq.*

5. The Court has supplemental jurisdiction over the remaining claims for relief under 28 U.S.C. § 1367(a) because they are so related to the claims within the original jurisdiction of the Court that they form part of the same case or controversy under Article III of the United States Constitution.

6. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Raytheon and Lockheed, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. This Court has general jurisdiction over Lockheed based on its continuous and systematic contacts with this District, including, among other things, owning and operating a manufacturing facility in Goodyear, Arizona, and a Missiles and Fire Control Support Center in Gilbert, Arizona. In addition, the Court has specific jurisdiction over Lockheed. Lockheed purposefully directed its activities at Arizona by committing intentional acts expressly aimed at Arizona thereby causing harm that Lockheed knew was likely to be suffered by Raytheon in this District. Specifically, Lockheed knowingly adopted the PAVEWAY™ mark -- a mark identical to Raytheon's PAVEWAY™ mark -- and used the mark to compete directly with Raytheon. Raytheon's claims arise out of or relate to the Lockheed's forum-related activities, namely, Lockheed's adoption and use of the PAVEWAY™ mark. In addition, Lockheed knew that its tortious conduct would be felt by Raytheon in Arizona, where its business unit that designs and sells the products at issue is based. Finally, the exercise of personal jurisdiction over Lockheed would be fair and reasonable. Lockheed has purposefully interjected itself into this District. Because



1 Lockheed has significant operations in Arizona, the burden on Lockheed in defending in
2 this District would not be significant. The exercise of jurisdiction would not conflict with
3 the sovereignty of the State of Maryland, where Lockheed is incorporated. The State of
4 Arizona has a very strong interest in adjudicating this dispute, which directly affects one
5 of its largest employers. This District can provide an efficient judicial resolution of the
6 controversy, because the time from filing to disposition is reasonable. This forum is
7 important to Raytheon's interest in convenient and effective relief, because a large
8 number of the witnesses and the documents relating to this dispute are located in Tucson.
9 Finally, there is no alternative forum that would be more convenient.

10 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

11 **BACKGROUND ON RAYTHEON'S LASER GUIDED BOMB PRODUCTS**

12 9. Raytheon is an industry leader in defense and government electronics,
13 space, information technology, technical services, and business aviation and special
14 mission aircrafts. For the past ninety (90) years, Raytheon has developed new defense
15 technologies and applied these technologies for use in defense and commercial markets.

16 10. In 1997, Raytheon acquired Texas Instruments' laser guided bomb division.
17 LGBs have a guidance system that detects laser energy and guides the weapon to a target
18 illuminated by an external laser source.

19 11. Since its acquisition of Texas Instruments' LGB division, Raytheon has
20 manufactured and sold LGBs under the PAVEWAY™ trademark. PAVEWAY™ LGBs
21 have been manufactured in Tucson, Arizona, since 1999.

22 12. The unique attributes of the PAVEWAY™ LGBs quickly made them
23 preferred munitions of the United States Air Force ("USAF") and United States Navy
24 ("USN").

25 13. For over thirty (30) years, Raytheon and its predecessor in interest, Texas
26 Instruments, were the single source for U.S. military buyers of LGB products, which
27 were marketed under the PAVEWAY™ mark.
28



1 14. The introduction of the PAVEWAY™ laser guided bomb products forty
2 (40) years ago revolutionized tactical air-to-ground warfare. The PAVEWAY™ LGBs
3 not only drastically reduce the number of munitions required to destroy a target, but they
4 also feature accuracy, reliability, and cost-effectiveness previously unattainable, while
5 reducing collateral damage.

6 15. Raytheon's PAVEWAY™ kits are the most successful air-to-ground
7 weapon system available, making up over half of all air-to-ground precision guided
8 weapons in Operation Desert Storm and Operation Iraqi Freedom.

9 16. Raytheon has made significant sales of its LGB products under the
10 PAVEWAY™ mark. By 2004, before Lockheed began using the PAVEWAY™ mark,
11 Raytheon had delivered 250,000 units of the PAVEWAY II LGB product. As of 2012,
12 Raytheon has delivered an estimated 340,000 LGB products under the PAVEWAY™
13 mark, amounting to several billions of dollars in sales.

14 **RAYTHEON'S LONG-STANDING USE OF THE PAVEWAY™ MARK**

15 17. For forty (40) years, Raytheon (directly and through its predecessor in interest) has
16 extensively used and promoted its PAVEWAY™ mark in connection with the marketing
17 and sale in commerce of LGB products. Raytheon offers a family or suite of
18 PAVEWAY™ LGB products as follows:

- 19 • PAVEWAY™ II LGB is Raytheon's basic laser-guided bomb, using laser energy
20 directed on the target and received by a guidance kit.
- 21 • ENHANCED PAVEWAY™ II LGB utilizes laser energy as well as Global
22 Positioning System ("GPS") and Inertial Navigation System ("INS"), making it a
23 dual-mode laser-guided bomb with all-weather precision.
- 24 • PAVEWAY™ III LGB enhances the PAVEWAY™ II LGB's capability with
25 increased delivery range, low-level release optimization, and greater seeker lock-
26 on distance. Lockheed does not manufacture or supply this product.
- 27 • ENHANCED PAVEWAY™ III LGB adds GPS/INS capability to the low-altitude,
28



1 long-range capability of the PAVEWAY™ III LGB product.

- 2 • PAVEWAY™ IV LGB is a dual mode laser guided bomb that includes a
3 specialized warhead and fuse.

4 In the procurement process, the generic term for all of the above products and associated
5 guidance kits is Guided Bomb Unit or “GBU”. Differentiation of the various laser
6 guidance kits is achieved by adding numbers and letters after the generic term “GBU”.
7 Thus, a GBU-10 kit accommodates a 2000 pound warhead, a GBU-12 kit accommodates
8 a 500 pound warhead, and a GBU-16 kit accommodates a 1,000 pound warhead. The kit
9 consists of a Computer Control Unit (“CCU”) mounted at the front of the bomb for
10 targeting and guidance and an Air Foil Group (“AFG”) fitted at the back of the bomb that
11 operates as a “tail fin”. Raytheon’s PAVEWAY™ family of LGB kits have been the
12 leader in precision-guided weapons since its introduction and is the “control” in the LGB
13 Procurement process.

14 18. Raytheon’s PAVEWAY™ LGB kits have been put to the test in every major
15 conflict and have proven themselves to be the weapon of choice for the end user. As a
16 result, the relevant consumers recognize the PAVEWAY™ mark as referring to
17 Raytheon’s high-quality LGB products.

18 19. Over the years, Raytheon and its predecessor in interest have invested
19 substantial time and resources developing valuable goodwill in the PAVEWAY™ mark.
20 As a result, the PAVEWAY™ mark is a strong and highly distinctive mark that identifies
21 Raytheon as the source of its family of quality PAVEWAY LGB kits.

22 20. At the time Lockheed entered the LGB market, the PAVEWAY™ mark had
23 gained substantial notoriety and goodwill among purchasers and potential purchasers of
24 LBG kits. And, at all times prior to Lockheed’s entry into the LGB market and since
25 then, the PAVEWAY™ mark has maintained its distinctiveness.

26 21. Raytheon sells PAVEWAY™ LGB products in commerce to a variety of
27 customers through various trade channels, including directly to the Department of
28



1 Defense and U.S. government agencies, and to foreign customers through direct foreign
2 sales and through foreign military sales. Through its decades of extensive, continuous
3 and exclusive use, Raytheon has developed significant goodwill in the PAVEWAY™
4 mark. Raytheon has sold PAVEWAY™ LGBs in over forty (40) countries and has
5 extensively used and promoted PAVEWAY™ LGB kits in over sixty (60) countries,
6 including but not limited to the United States, the United Kingdom, Norway, Switzerland,
7 Australia, Canada, Turkey, South Korea, India, Pakistan, Egypt, Jordan, Kuwait, Saudi
8 Arabia, and others.

9 22. The PAVEWAY™ mark is inherently distinctive and therefore entitled to
10 trademark protection and registration without any showing of secondary meaning.
11 Indeed, “paveway” is not an existing English word and has no meaning when applied to
12 LGBs. In the alternative, if the PAVEWAY™ mark is not inherently distinctive, it has
13 acquired secondary meaning as a result of the extensive use and promotion of the mark
14 by Raytheon and its predecessor in interest over a significant period of time. As a result
15 of Raytheon’s decades of continuous, widespread and exclusive use prior to the
16 commencement of Lockheed’s deliberate and systematic trademark encroachment, the
17 PAVEWAY™ mark is a strong and distinctive mark. Moreover, in light of the fame,
18 notoriety, and history of the PAVEWAY™ mark, the amount of effort used to promote
19 the mark as a distinctive source identifier of Raytheon’s LGBs, and its association in the
20 relevant public mind with Raytheon, the PAVEWAY™ mark has acquired secondary
21 meaning for the majority of end users as well as the relevant purchasing public, including
22 foreign military buyers who buy in the U.S.

23 **LOCKHEED’S PROGRESSIVE ENCROACHMENT**
24 **ON RAYTHEON’S RIGHTS**

25 23. Lockheed began selling laser guided training rounds (also called “LGTRs”)
26 in 1992. LGTRs serve as practice bombs used to train aircrews in the use of LGBs.
27 From 1992 through approximately 2004, Lockheed used the generic descriptor “Laser
28



1 Guided Training Rounds” to identify its LGTRs.

2 24. In 2002, pursuant to the terms of a Settlement Agreement between
3 Lockheed and the Department of Defense (which had previously refused to qualify
4 Lockheed as a supplier of LGBs), Lockheed became qualified to sell LGBs. Until this
5 point, Raytheon and its predecessor in interest were the sole source of LGBs in the U.S.
6 and the sole user of the PAVEWAY™ mark.

7 25. When it first entered the LGB market in 2002, Lockheed used generic
8 designations such as “laser guided bomb” and “LGB” to refer to its products. At that
9 time, the PAVEWAY™ brand was associated solely and exclusively with Raytheon.

10 26. For an appreciable amount of time, after it initially entered the LGB
11 market, Lockheed did not use the PAVEWAY™ mark to identify its LGB products.

12 27. On information and belief, it was not until 2004 or 2005 that Lockheed
13 began using Raytheon’s PAVEWAY™ mark on its competing LGB products. During
14 depositions in a trademark opposition proceeding in Israel, Lockheed admitted that it
15 added PAVEWAY™ to its existing product name for the LGBs to enhance “brand
16 recognition.”

17 28. Since that time, Lockheed has used the PAVEWAY™ trademark in an
18 increasingly prominent manner. For example, in October 2006, Lockheed began using
19 the PAVEWAY™ mark in press releases, in marketing materials and in various other
20 ways. In fact, Lockheed has used Raytheon’s PAVEWAY™ mark in the same prominent
21 manner in which it uses its own proprietary marks. True and accurate illustrations of
22 Lockheed’s unauthorized use of the PAVEWAY™ mark are attached at Exhibit A.

23 29. Upon information and belief, Lockheed’s infringing LGB products are sold
24 in commerce to some of the same customers and through some of the same trade
25 channels as Raytheon’s PAVEWAY™ LGB products, including directly to the
26 Department of Defense and U.S. government agencies, and to foreign customers through
27 direct foreign sales and through foreign military sales.



1 30. Upon information and belief, Lockheed's LGB products are different in
2 certain respects from Raytheon's PAVEWAY™ LGB kits. For example, Raytheon uses
3 analog technology in its CCU guidance unit while Lockheed uses digital technology.
4 Lockheed does not offer LGB products that correspond to Raytheon's PAVEWAY™ III
5 LGB kit, Raytheon's ENHANCED PAVEWAY™ III kit, or Raytheon's PAVEWAY™ IV
6 kit. In addition, some aircraft have been cleared for Raytheon's PAVEWAY™ LGB kits
7 but not for Lockheed's LGB products. Similarly, Lockheed's LGB products are not
8 compatible with some test equipment that is used with Raytheon's PAVEWAY™ LGB
9 products. Further, Raytheon does not make or sell Laser Guided Training Rounds
10 (LGTRs) at all.

11 **LOCKHEED MARTIN'S USE OF THE PAVEWAY**
12 **DESIGNATION HAS CAUSED ACTUAL CONFUSION**

13 31. Lockheed's use of the PAVEWAY™ mark has resulted in several instances
14 of actual confusion among LGB purchasers. For example, Raytheon received a report of
15 "severe accuracy issues" with PAVEWAY™ LGB kits in connection with U.S. Naval
16 operations. Raytheon immediately attempted to determine the possible cause of the
17 problem. However, after requesting serial numbers, Raytheon quickly learned that
18 Raytheon's PAVEWAY™ kits were not at issue; rather, the accuracy problems were with
19 Lockheed's products.

20 32. Lockheed's unauthorized use of the PAVEWAY designation also has
21 resulted in actual confusion among foreign military purchasers who buy in the U.S. For
22 example, on October 12, 2005, Raytheon employees briefed members of the Royal
23 Netherlands Air Force ("RNAF") on Raytheon's PAVEWAY™ II kits. Part way through
24 the briefing, the RNAF indicated that the Raytheon group they met with previously had
25 not briefed the same weapon capability. The RNAF further indicated that, as a result of
26 the previous briefing and reported inability of the PAVEWAY LGBs to hit moving
27 targets, the RNAF was advised to remove Raytheon from the dual-mode weapon
28



1 competition. Raytheon advised the RNAF that no one from Raytheon had previously
2 briefed the RNAF. Raytheon later learned that the previous RNAF briefing was with
3 Lockheed. After learning of the error, the RNAF placed Raytheon's PAVEWAY™ LGB
4 back in the competition. Raytheon was almost eliminated from the competition because
5 of the confusion caused by Lockheed's use of Raytheon's PAVEWAY™ mark in
6 connection with an inferior product.

7 33. In another incident, in spring 2004, during Operation Iraqi Freedom, a U.S.
8 military unit aboard the USS George Washington reported serious inaccuracy issues with
9 PAVEWAY LGBs. In Raytheon's discussions with the Commanding Officer trying to
10 figure out the possible causes of the failures, it became apparent that there was confusion
11 resulting from Lockheed's use of the PAVEWAY™ mark in connection with its LGB
12 products. The accuracy problems were associated with Lockheed's LGBs, not Raytheon's
13 LGBs.

14 34. In addition, during the Raytheon Strike Warfare Conference held in 2004,
15 the 86th Fighter Squadron, which controls the USAF Weapons System Evaluation
16 Program, briefed recent LGB product performance results. The results were broken
17 down by LGB airfoil type, as well as LGB guidance type. The data showed significant
18 discrepancies between the two guidance systems, leading to a recommendation that one
19 of the models not be used until the USAF completed a full review process. The audience
20 was not aware that the hardware at issue was made by two different manufacturers and
21 that the hardware with low performance results was Lockheed's product -- not
22 Raytheon's product. Again, the poor performance of Lockheed's LGB product was
23 attributed to Raytheon due to confusion caused by Lockheed's use of the PAVEWAY™
24 mark in connection with Lockheed's inferior LGBs.

25 35. Confusion has resulted with foreign military buyers from Italy and Saudi
26 Arabia, each of whom placed orders in the U.S. for PAVEWAY LGBs through the
27 United States Foreign Military Sales process. These buyers were surprised to learn that
28



1 the U.S. DOD was providing them with Lockheed LGBs which had not been qualified on
2 their aircraft, were not compatible with their existing logistics train, and were not
3 compatible with their existing, approved testing and maintenance systems

4 36. More recently, in January 2011, confusion resulting from Lockheed
5 Martin's use of Raytheon's PAVEWAYTM trademark threatened to negatively affect
6 Raytheon's reputation with high-level Air Force personnel. On or about January 27,
7 2011, Raytheon Vice President of Air Warfare Systems Harry Schulte attended the
8 annual executive level Air Force Weapon Systems Review at Eglin Air Force Base in
9 Florida. During the course of the weapons review and with several Air Force Generals in
10 the room, the presenter stated that there had been problems with the accuracy of
11 Raytheon's PAVEWAYTM LGBs over the past year. When Mr. Schulte raised a question
12 regarding this statement, the presenter clarified that the problems with inaccuracy in
13 targeting had actually been observed in connection with the LGBs provided by Lockheed
14 Martin. On information and belief, this confusion continues in the service branches and
15 among end users in various situations where Raytheon does not have the opportunity to
16 correct the misinformation.

17 37. Raytheon is also aware of other instances in which military units have
18 restricted use of Raytheon's PAVEWAYTM LGBs based on alleged performance issues
19 because they inadvertently confused Lockheed's LGBs with Raytheon's PAVEWAYTM
20 LGBs. These instances of actual confusion have not only harmed Raytheon's business,
21 but they have also damaged Raytheon's reputation.

22 **RAYTHEON'S ACTIONS AND TRADEMARK OPPOSITION**

23 38. Upon learning of Lockheed's progressive encroachment on its rights in the
24 PAVEWAYTM mark in 2005, Raytheon began taking steps to protect and enforce its
25 trademark rights. Raytheon objected to Lockheed's usurpation of Raytheon's rights in
26 the PAVEWAYTM mark. Instead of continuing to rely on its common law trademark
27 rights as it had for decades as the sole producer of LGBs, Raytheon filed federal
28



1 trademark applications for the PAVEWAY mark (Ser. Nos. 78/481,770, 78/672,972) in
2 2004 and 2005, respectively. True and accurate copies of the trademark applications are
3 attached as Exhibit B. In connection with the filing of the trademark applications,
4 Raytheon also filed a “petition to make special” in light of Lockheed’s infringement of
5 the PAVEWAYTM mark in an effort to expedite the trademark registration process.

6 39. Despite Raytheon’s long-standing, continuous and exclusive use of the
7 PAVEWAYTM mark for LGBs until Lockheed began its infringement, in 2005 and 2006,
8 respectively, Lockheed opposed Raytheon’s trademark applications to register the
9 PAVEWAYTM marks, based on, among other grounds, the contention that “PAVEWAY”
10 is a generic term. The oppositions were consolidated and proceeded in the TTAB
11 (Opposition No. 91167189) for a total of six years -- until December 2011. Numerous
12 other trademark proceedings involving the PAVEWAYTM mark are pending between the
13 parties in foreign jurisdictions.

14 40. While the TTAB proceeding was pending, Lockheed began authoring its
15 own evidence of the alleged genericness of the PAVEWAYTM. For example, beginning in
16 October 2006 -- after Raytheon had applied for federal registration of its PAVEWAYTM
17 mark -- Lockheed began issuing press releases stating that “Paveway is a generic term.”
18 The press releases were targeted to military customers in the U.S. and abroad. An
19 example of these press releases is attached as Exhibit C. By including the statement that
20 “Paveway is a generic term” in its press releases, Lockheed was intentionally attempting
21 to buttress its position in the TTAB proceedings and influence consumers into believing
22 that PAVEWAY is a generic term. Later, Lockheed began using “PAVEWAY” with a
23 lower case “p” -- another tactic designed to try to render the mark generic. Indeed, by
24 trying to influence the perceptions of consumers that PAVEWAYTM is a generic term,
25 upon information and belief, Lockheed was attempting to push the trademark into
26 genericism and influence the outcome of the TTAB proceeding.

27 41. In December 2011, in an opinion that it designated as non-precedential and
28



1 in which it specifically mentioned it had no jurisdiction over unfair competition claims,
2 the TTAB concluded that, based on the evidence provided during the TTAB proceeding,
3 PAVEWAYTM is a generic term for LGBs. However, the TTAB applied a different
4 standard than the standard for determining genericness in this Court. Indeed, the TTAB
5 determined genericness long *after* Lockheed began using the PAVEWAYTM mark and
6 creating self-serving evidence of genericness, such as press releases stating that
7 “Paveway is a generic term.” However, in the Ninth Circuit, the genericness of a mark is
8 determined at the time that the alleged infringer entered the market -- in this case, in
9 2002. In addition, the TTAB’s decision is not binding on this Court and, under the
10 circumstances, is not persuasive authority. The TTAB’s only power is to determine
11 questions of federal trademark registration. The TTAB does not have the power to
12 determine the protectability of the PAVEWAYTM mark, whether Raytheon is entitled to
13 exclusive use of the PAVEWAYTM mark, or whether Lockheed is liable for trademark
14 infringement, unfair competition, or on any other claim that Raytheon has asserted or
15 may assert against it. However, the pendency of the TTAB proceedings tolled the time
16 period for bringing a civil action for infringement and, after six years of TTAB litigation
17 and numerous additional instances of actual confusion and gradual erosion of its goodwill
18 and reputation, Raytheon has reached its limit.

19 42. Raytheon cannot control the quality of Lockheed’s LGB products and is not
20 willing to be held accountable -- due to customer confusion -- for poor quality LGB
21 products sold by Lockheed in connection with the PAVEWAYTM mark. Lockheed’s use
22 of the PAVEWAYTM trademark has created the false impression that its LGBs are of the
23 same quality as Raytheon’s LGBs, when that is not the case.

24 43. Lockheed’s use of the PAVEWAY mark to identify its own LGBs has
25 resulted in a pronounced loss in LGB market share for Raytheon. This loss in market
26 share would not have occurred without the false equivalency created by Lockheed’s
27 misappropriation of Raytheon’s valuable PAVEWAYTM trademark. Lockheed’s use of
28



1 the PAVEWAY mark has also resulted in significant losses to Raytheon in sales to
2 foreign military units who buy in the U.S., which likewise would not have occurred
3 without Lockheed's misuse of and intentional attempts to infringe upon and destroy
4 Raytheon's trademark rights.

5 44. The need to prevent confusion in this case is heightened because the
6 products at issue are military weapons and confusion among these products could have
7 disastrous effects.

8 45. As a result of Lockheed's actions, Raytheon has suffered and continues to
9 suffer substantial damage and irreparable injury. Raytheon has no adequate remedy at
10 law, and unless Lockheed is enjoined by this court, its acts will continue to cause damage
11 and irreparable injury to Raytheon, and to damage Raytheon's goodwill and business
12 reputation. Raytheon cannot ascertain the precise amount of its damages at this time.

13 **FIRST CLAIM FOR RELIEF**

14 **(Declaratory Judgment)**

15 **(28 U.S.C. § 2201)**

16 46. The allegations of the preceding paragraphs are incorporated herein by
17 reference.

18 47. There is an actual controversy between the parties as to the protectability of
19 the PAVEWAY™ mark, including whether the PAVEWAY™ mark was generic at the
20 time that Lockheed entered the LGB market in 2002.

21 48. Raytheon has a real and reasonable apprehension of litigation.

22 49. The controversy is ripe for adjudication.

23 **SECOND CLAIM FOR RELIEF**

24 **(Unfair Competition and False Designation of Origin)**

25 **(15 U.S.C. § 1125(a))**

26 50. The allegations of the preceding paragraphs are incorporated herein by
27 reference.

28 51. Lockheed's use of the PAVEWAY mark is likely to deceive and cause
confusion of the purchasing public, both point of sale and post-sale confusion, and induce



1 them to believe that Lockheed or its LGBs originate with or are in some manner related
2 to, approved by or sponsored by Raytheon.

3 52. Lockheed has intentionally engaged in conduct that constitutes a false
4 designation of origin, a false or misleading description of fact, and a false or misleading
5 representation of fact tending wrongfully and falsely to describe or represent a connection
6 or affiliation between Lockheed goods and Raytheon's goods.

7 53. Lockheed's actions constitute use of a false designation of origin, or a false
8 representation, which wrongfully and falsely designates the origin of Lockheed's goods
9 and related commercial activities as originating from or being approved by Raytheon, and
10 thereby constitute a false description or representation used in interstate commerce in
11 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

12 54. Because of Lockheed's unfair competition and false designation of origin,
13 Raytheon has been irreparably harmed. Raytheon will continue to suffer irreparable
14 harm unless Lockheed is permanently enjoined from infringing the PAVEWAY™ Mark.

15 55. Raytheon is entitled to recover damages, as well as all profits heretofore
16 realized by Lockheed during its infringement of the PAVEWAY™ mark, as well as
17 Raytheon's attorney's fees and costs in this action pursuant to 15 U.S.C. § 1117(a).

18 56. Lockheed's actions have been misleading, willful, and malicious.
19 Therefore, Raytheon is entitled to recover three times the amount of Lockheed's profits
20 plus Raytheon's reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(b).

21 **THIRD CLAIM FOR RELIEF**
22 **(Trademark Infringement**
23 **(A.R.S. §§ 44-1441, *et seq.*)**

24 57 Raytheon repeats the allegations contained in the preceding paragraphs as if
25 set forth in full herein.

26 58. Raytheon owns Arizona state trademark No. 55465 for the PAVEWAY
27 mark.

28 59. Lockheed's use of Raytheon's PAVEWAY™ mark is likely to cause



1 confusion, or to cause mistake, or to deceive consumers as to the origin, sponsorship, or
2 approval of Lockheed's goods and related commercial activities.

3 60. Lockheed's unauthorized use of Raytheon's PAVEWAYTM mark infringes
4 Raytheon's statutory trademark rights and constitutes infringement under A.R.S. §§ 44-
5 1441 *et seq.*

6 61. These actions have injured Raytheon and continue to cause injury entitling
7 Raytheon to damages in an amount to be proven at trial and to injunctive relief.

8 **FOURTH CLAIM FOR RELIEF**

9 **(Common Law Trademark Infringement and Unfair Competition)**

10 62. Raytheon repeats and realleges each and every allegation set forth in the
11 preceding paragraphs as if fully set forth herein.

12 63. As a result of its actions, as described above, Lockheed has
13 misappropriated valuable property rights of Raytheon, is seeking to trade on the goodwill
14 symbolized by Raytheon's PAVEWAYTM mark, and is thereby likely to confuse and
15 deceive purchasers and end users regarding the origin, sponsorship, or approval of
16 Lockheed's goods and related commercial activities.

17 64. In addition, Lockheed is liable for engaging in conduct intended to destroy
18 or reduce the distinctiveness of the PAVEWAYTM mark.

19 65. The acts complained of herein constitute common law trademark
20 infringement and unfair competition.

21 66. The acts complained of herein have damaged Raytheon and, unless
22 permanently enjoined by this Court, will continue to damage Raytheon irreparably.
23 Raytheon has no adequate remedy at law for these wrongs and injuries. The damage to
24 Raytheon includes harm to its goodwill and reputation. Raytheon is, therefore, entitled to
25 a permanent injunction, and an award of damages.

26

27

28



FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

67. Raytheon repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

68. Lockheed's acts have led to an improper enrichment of Lockheed to the severe detriment of Raytheon. Lockheed uses the PAVEWAYTM mark for goods that compete with those offered by Raytheon, thereby gaining a special edge and a "free ride" in that Lockheed has not been burdened with the investment of time and expense incurred by Raytheon in developing goodwill, value, secondary meaning, and popularity of the PAVEWAYTM mark and establishing the track record of proven product performance that the mark symbolizes.

69. By its actions, Lockheed has been enriched to the detriment and impoverishment of Raytheon, with no justification for Lockheed's enrichment and Raytheon's impoverishment. Moreover, there is a direct link or connection between Lockheed's enrichment, on the one hand, and the detriment and impoverishment suffered by Raytheon, on the other. Raytheon has suffered, and will continue to suffer, irreparable injury and harm as a result of Lockheed's actions, and has no adequate remedy at law.

70. By its action, as hereinabove pleaded, Lockheed has very deliberately and intentionally taken steps to progressively encroach on Raytheon's rights so as to disrupt Raytheon's business and gain an economic advantage over Raytheon.

71. As a result of Lockheed's conduct, as hereinabove pleaded, Raytheon has been and will continue to be commercially damaged because of customer confusion as to the origin, sponsorship, or approval of the LGB products sold by Lockheed. Lockheed has been unjustly enriched through its unlawful and unauthorized actions as hereinabove pleaded, including by winning contract awards and other business as a result of Lockheed's improper and deceptive use of the PAVEWAY mark as well as its improper and misleading actions taken in a calculated attempt to render the mark generic where other generic terms (e.g. GBU 10, GBU 12, and GBU 16) were readily available for its



1 use in competing in the LGB marketplace.

2 72. Lockheed has no competitive need to use Raytheon's PAVEWAY™ mark
3 in connection with its LGB and in the government procurement process - the only reason
4 for it to do so is to obtain an economic benefit by conveying a particular level of quality
5 with its product, when that it not the case. This level of quality is associated with
6 Raytheon's PAVEWAY™ trademark LGB products and not with Lockheed's LGB
7 products.

8 73. Lockheed's actions have resulted in it being unjustly enriched to the
9 impoverishment of Raytheon. Based on Lockheed's actions, Raytheon is entitled to an
10 award in the amount of damages it has suffered as a result of Lockheed's actions.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Raytheon respectfully requests judgment as follows:

13 A. That the Court declare that: (1) the PAVEWAY™ mark is a protectable
14 trademark, and not a generic term for laser guided bombs; (2) Raytheon is the owner of
15 all right, title and interest in and to the PAVEWAY™ mark for laser guided bombs and
16 related goods and services; and (3) Raytheon is entitled to federal registration of the
17 PAVEWAY™ mark for laser guided bombs and related goods and services.

18 B. That the Court direct the United States Patent and Trademark Office to
19 grant registration of the PAVEWAY mark to Raytheon.

20 C. That the Court enter a judgment for Raytheon and against Lockheed for:

- 21 (1) Unfair competition and false designation of origin as defined in
22 15 U.S.C. § 1125(a);
23 (2) Trademark infringement under A.R.S. §§ 44-1541 and 44-1452;
24 (3) Common law trademark infringement and unfair competition; and
25 (4) Unjust enrichment.
- 26
27
28



1 D. That the Court permanently enjoin Lockheed and its officers, agents,
2 representatives, servants, employees, attorneys, successors and assigns, and all others in
3 active concert or participation with Lockheed, from:

4 (1) Using the PAVEWAYTM mark or any confusingly similar mark or
5 other colorable imitation of the PAVEWAYTM mark, in connection with the advertising,
6 manufacturing, offering for sale, distribution or sale of LGB products or any other goods;

7 (2) Using the PAVEWAYTM mark in a generic manner, claiming that the
8 PAVEWAYTM mark is a generic term, or engaging in efforts to destroy or reduce the
9 distinctiveness of the PAVEWAYTM mark;

10 (3) Committing any other acts calculated to cause actual or potential
11 purchasers to believe that Raytheon is the source or sponsor of Lockheed's goods; and

12 (4) Assisting, aiding or abetting any supplier, distributor or any other
13 person or business entity in engaging in or performing any of the activities referred to in
14 subparagraphs (1) through (3) above.

15 E. For an award of all profits heretofore realized by Lockheed during its use of
16 the infringing marks pursuant to 15 U.S.C. § 1117, and for an award of reasonable
17 attorney's fees pursuant to 15 U.S.C. § 1117(a), given that this is an exceptional case.

18 F. For an award of all damages sustained by Raytheon as a result of
19 Lockheed's unlawful acts as hereinabove pleaded, including for compensatory, punitive
20 and exemplary damages.

21 G. For an award of costs.

22 H. For all other relief the Court deems just and proper.

23 **JURY DEMAND**

24 Plaintiff hereby demands a trial by jury, on all claims so triable, comprised of the
25 maximum number of jurors allowed by law.

26

27

28



1 RESPECTFULLY SUBMITTED this 27th day of September 2012.

2 LEWIS AND ROCA LLP

3
4 By /s/ Sean Garrison

5 Michael J. McCue (pro hac vice pending)

6 Jennifer A. Van Kirk

7 Sean Garrison

8 Anne Aikman-Scalese

9
10 Attorneys for Raytheon Company
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28